

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.N., a Minor,

on Habeas Corpus.

G057283

(Super. Ct. No. 17DL0388)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus to file a late notice of appeal. Petition granted.

Appellate Defenders, Inc., and Leslie A. Rose for Petitioner.

No appearance for Respondent Court.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Senior Assistant Attorney General, Michael Pulos and Joy Utomi, Deputy Attorneys General for Respondent.

\*

\*

\*

THE COURT:\*

Petitioner J.N., a minor, seeks relief from the failure to file a timely notice of appeal. The petition is granted.

The Orange County Superior Court sustained as true a petition alleging that petitioner committed murder, gang-related vandalism, and street terrorism.

At the disposition hearing held on October 2, 2018, the juvenile court declared petitioner a ward of the court pursuant to Welfare and Institutions Code section 602. The court committed him to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, and declared a maximum term of 40 years to life. The juvenile court then stayed the commitment and placed him under the custody and control of the probation department with numerous conditions, including restrictions on his travel, his associations, and his activities.

Appointed counsel Kenneth Morrison represented petitioner at trial. Morrison told petitioner he would file the notice of appeal on his behalf. However, Morrison did not timely file the notice of appeal due to error and inadvertence. Morrison realized the error, but filed a late notice of appeal anyway on petitioner's behalf on January 17, 2019, over a month late. The superior court filed the notice of appeal although it was untimely.

On January 22, 2019, this court issued an order advising petitioner that it was considering dismissing his appeal in Case No. G057242 on the basis that it was not timely, and inviting him to file points and authorities within 30 days of the date of the order, explaining why the appeal should not be dismissed. This petition followed.

The Attorney General does not oppose petitioner's request for relief to file the notice of appeal. (*People v. Romero* (1994) 8 Cal.4th 728, 739-740, fn. 7.)

---

\* Before Fybel, Acting P.J., Thompson J. and Goethals J.

The principle of constructive filing of the notice of appeal should be applied in situations where a criminal defendant requests trial counsel to file a notice of appeal on his behalf and counsel fails to do so in accordance with the law. (*In re Benoit* (1973) 10 Cal.3d 72, 87-88.) This is because a trial attorney who has been asked to file a notice of appeal on behalf of a client has a duty to file a proper notice of appeal, or tell the client how to file it himself. In this case, trial counsel told petitioner he would file a notice of appeal on his behalf and failed to do so. Petitioner's reasonable reliance on the promise of trial counsel to file a timely notice of appeal entitles him to the relief requested.

The petition is granted. The clerk of the superior court is directed to treat the notice of appeal filed on January 17, 2019, in Orange County Superior Court case No. 17DL0388, as being timely filed. Further proceedings, including the preparation of the record on appeal, are to be conducted according to the applicable rules of court. In the interest of justice, the opinion in this matter is deemed final as to this court forthwith.